PSJ9 Exh 28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	:	HON. DAN A. POLSTER
APPLIES TO ALL CASES	:	NO. 1:17-MD-2804

- HIGHLY CONFIDENTIAL -

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - -

February 19, 2019

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Videotaped deposition of MICHAEL DiBELLO, taken pursuant to notice, was held at the offices of Locke Lord, LLP, 200 Vesey Street, New York, New York, beginning at 10:29 a.m., on the above date, before Michelle L. Gray, a Registered Professional Reporter, Certified Shorthand Reporter, Certified Realtime Reporter, and Notary Public.

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formalized process of understanding the practice to the drug, correct?

A. Correct.

Q. You would agree with me that concept is a "know your customer" concept, correct?

A. It's a way of knowing your customer. It is a way.

Q. Okay. Her fourth finding, "Orders that are highlighted as suspicious are all investigated. Those that are cleared from suspicious status are released. Those that are not are canceled. At the end of each month, two reports are submitted to the appropriate field office of the DEA. The first report includes those pended orders that were cleared from suspicious status. The second report reflects those orders that were deemed suspicious and canceled."

Did you understand that that was the practice through 2005 for pended and suspicious orders?

A. Yes.

Q. Did you understand though in that practice, that she recommended that suspicious orders be reported immediately and not at the end of the month. By reporting them on a monthly basis at the end of the month was inconsistent with the Controlled Substances Act requirements.

MR. McDONALD: Object to the form.

THE WITNESS: In 2005, I don't recall if that was inconsistent with the act.

BY MR. MIGLIORI:

Q. She finds -- she documents here the requirement, "The registrant shall inform the field division office of the administration in this area of suspicious orders when discovered by the registrant."

Her recommendation she writes, "While HSI has been using the current reporting process for several years, it is recommended consideration to

be given to filing the suspicious order for those orders not released from suspicious status to the DEA immediately."

Do you understand that that was the recommendation then, that reporting them at month's end was not consistent with the requirements of the Controlled Substances Act?

A. That was her recommendation.

Q. Okay. Fifth finding. "When an order pends as suspicious, the order and the customer patterns are reviewed. If it still remains suspicious, a letter is sent to the customer requiring an explanation of the order. A pending order will not be released without a return letter from the customer."

Will you agree with me that the methodology at Schein through September of 2005, and beyond, was, when an order pended, that a letter was sent by first class mail to the doctor or the customer for further information?

to -- to be able to readily review the orders for each of these criteria.

Whereas, again, the system was already in existence many years prior to 2008. It may not have been computer -- automated, but it's still -- it was able to review and identify suspicious orders.

BY MR. MIGLIORI:

Q. Well, we just went through -- I don't want to go through them again. But we just went through Buzzeo's findings in 2005, and it wasn't picking up that it needed -- there needed to be a new review of how to check orders for patterns and frequency, not just size. Do you recall that?

A. Yes.

Q. And one of the things this new monitoring system will review is, among other things, purchasing patterns. That is a new way of looking at the

ordering -- the orders coming into Schein, according to this document.

A. From a systematic approach.

Q. From a systematic approach. And from any approach. That there was, according to Buzzeo in 2005, no independent review of just pattern in the system prior to this change.

A. In the computer system?

Q. Right.

A. In the computer system.

Q. In the computer system?

A. In the computer system.

Q. The system was not picking up changes in pattern or frequency in the computer system.

A. I would agree with that.

Q. And this new system was going to do that.

A. In the computer system.

Q. In the computer system.

And that computer system didn't get implemented in final process until October of 2009, according to your

says here, when -- the order is DEA and board of pharmacy are notified by regulatory affairs.

Q. Where?

A. This stuff here.

Q. So under this system, this, on the third page?

A. On this flowchart.

Q. So in 2011, when an order -- I'll go back to Page 2 for a second. When an order is pended, because of a deviation in size, frequency or pattern, by this procedure the DEA isn't notified immediately as of February of 2011?

A. The order is -- is pended here. It's not deemed to be suspicious.

Q. All right. But what we saw in the early documents that a suspicious order is one that is a deviation in size, frequency, and pattern.

A. Right.

Q. And that once pended, it needs to be reported, as Buzzeo stated in 2005, it needs to be reported

immediately, correct?

MR. McDONALD: Object to the form. Mischaracterizes the document.

BY MR. MIGLIORI:

Q. Not -- not at the end of the month, correct?

MR. McDONALD: Object to the form. Mischaracterizes the document and the testimony. That is not what the document said.

THE WITNESS: The order is pended here. That doesn't mean it's suspicious. There's a whole review process here, we just went through.

BY MR. MIGLIORI:

Q. I'm going to -- let me give you a hypothetical so we're not confusing.

If an order is a deviation in size, it is a pended order in Henry Schein's system, correct?

A. If it's a deviation in size.

Q. Yes?
A. Yes.
Q. An order that is a deviation in size, by definition under the CSA, is suspicious, correct?
MR. McDONALD: Object to the form.
THE WITNESS: Not necessarily.
BY MR. MIGLIORI:
Q. All right. Well, you actually had a document where you said exactly that, that we just referred to earlier.
You're saying that a deviation in size is not a suspicious order?
A. Potential, potentially. Potential. It could be. That's the review process that we're doing here.
Q. So in Schein's system, in February of 2011, Schein is not reporting immediately a deviation in size of order from prior purchasing history to the DEA

upon discovery. Is that true?

A. We were reporting suspicious orders.

Our definition of a suspicious order, after the review is conducted and deemed to be suspicious, that's when it was reported immediately.

Q. So this flowchart is accurate, that you would not have told DEA about this until you got to this last step here of it being --

A. Deemed suspicious.

Q. -- deemed suspicious.

All right. And then it says, "Notes are placed in the system to prevent future shipments of controlled substances to this customer."

Where would that go, where would that go into the system?

A. That's a verification function. I don't know where they'd put that.

Q. Would you know where to find it if you were asked to consult on a